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Current Topics.

The Inns of Court.

LITTLE more than rumour and common report are as yet available as to the post-war planning arrangements for the rebuilding of the Inns of Court. As in other and wider issues of planning, much controversy is likely, if it has not already begun, on the aims of the planning which all agree to be necessary, and the lines on which it is to proceed. The more conservative element will have a nostalgic desire to see the old vistas restored to the *status quo ante bellum*. Others will see in the necessary rebuilding an opportunity to erect "the city beautiful" in an attempt to improve on or remove the errors of the past. The question is acute in relation to Gray's Inn, where many solicitors at one time had their offices, and the Temple, where some solicitors still have their offices and which many solicitors have to visit daily in the exercise of their profession. In both places the devastation is serious. If we may be permitted to attempt to express what we feel may be the point of view of sol citors who visit and have offices in Gray's Inn and the Temple, and who from the nature of the case will have no say in the arrangements that are to be made, it is that what was good should be restored and that what was bad should be forgotten. Middle Temple Hall, Pump Court, Lamb Building, The Temple Church, The Inner Temple Gardens, Gray's Inn Hall and Gray's Inn Library should be restored, and we imagine that few will be able to suggest any but minor improvements on these things as they were. There were, however, positively ugly features which should not be restored. The grim workhouse-looking buildings at the south end of Middle Temple Lane, the misplaced block in Brick Court where now stands a reservoir of static water, Middle Temple Library, and other objects of execration come to mind. Quite apart, however, from the more permanent aspects of replanning the Inns of Court, there is the urgent short-term point of view of rehousing returning barristers, which must be taken into account. Some have had their places in chambers kept open for them, but others, the unlucky victims of bombing and other war-time vicissitudes, will find difficulties as regards accommodation in chambers, and the Benchers of the Inns owe it to returning warriors to have positive and practical plans for the distribution of the available accommodation. Such plans should not conflict with long-term rebuilding plans, and if priorities permit of the building of comfortable temporary accommodation pending a more ambitious rebuilding, this should not be entirely ruled out in these days of revolutionary building methods. And when the new buildings eventually rise, it is to be hoped that the provision of lifts and central heating will not be thought an outrage on the Temple's hallowed precincts.

Miss Ethel Stokes.

DURING the present war this journal has welcomed the opportunity given from time to time by The British Records Association to throw open its columns to appeals from that body to solicitors and others who might come across historic documents in the course of clearing out salvage. The Association has literally made history in the past few years, and to none more than to the late Miss ETHEL STOKES, who recently died at the age of seventy-four as the result of a street accident, must the credit of the achievements of the Association in this important field of work be ascribed. The MASTER OF THE ROLLS wrote of her in *The Times* of 1st November: "Making her headquarters at the Public Record Office, and working to a late hour at night, she devoted herself to the preservation of valuable documents from indiscriminate pulping. By means of leaflets and letters to the daily Press and legal and technical periodicals, and by enrolling the services of hundreds of skilled persons up and down the country to inspect and pronounce upon documents sent for salvage, she was instrumental in preserving much material of great value for local and even national history." Miss STOKES first attended the Public Record Office as a searcher at the age of eighteen. About ten years later she started a Record Office Agency in partnership with a friend, and this agency was often engaged by litigants in connection with peerage claims. From the commencement of the work of the British Records Association when it was founded by LORD HANWORTH in 1932 she gave herself unsparingly to its promotion. "The success of the Association," wrote LORD GREENE, "in stimulating interest in archives of every description and in securing the adoption of proper measures for their custody and preservation, has been in no small measure due to her untiring energy and technical knowledge."

Matrimonial Causes (War Marriages) Bill.

THE most comprehensive exposition of the case against the Matrimonial Causes (War Marriages) Bill that has so far been made was that by Mr. ALAN P. HERBERT in a letter to *The Times* of 31st October. He called the Bill, if it became law, a dismal monument to our laziness in law reform. Among a list of nine examples of categories into which he said persons marrying in the United Kingdom for the next five or six years would be divided, with different rights of access to the British courts, Mr. HERBERT gave: (1) English girl—m. citizen of Eire—before or after war—cruelty, adultery, desertion—no divorce possible (present law). (2) English girl—m. citizen of Eire—during war—one act of adultery—can divorce him in England—at once (this Bill). (3) English girl—m. American (Canadian, Australian, Pole)—war-time—one act of adultery—divorce in England—at once (this Bill). (4) English man—m. American girl—war time or any time—adultery—must wait three years (failing "exceptional hardship or depravity") (Act of 1937). The law in recent years, Mr. HERBERT wrote, had recovered some respect. The Bill was not responsible for all these distinctions; but it added so many that the law would soon be a mockery again. When the Bill was considered in committee on the same day in the House of Commons, Mrs. TATE moved an amendment to do away with the distinction between the war-time marriages dealt with in the Bill, which could be dissolved at once, and others, which, except in cases of exceptional depravity and hardship, could not be dissolved till three years had elapsed since the date of the marriage. This was supported by Mr. HERBERT. The ATTORNEY-GENERAL, however, argued that the circumstances were sufficiently different to make it wrong to apply the three years' proviso. First, in the vast majority of cases, continuous cohabitation was impossible. Secondly, not only might continuous cohabitation be impossible, but there might be fairly prolonged absence of the husband overseas. Thirdly, the husband's home would not be here, or the home of his relatives, and, if he committed adultery, and went to another part of the country, the chances of reconciliation were far less than in the case of the ordinary English marriage. Everybody knew that it was the families who were the instrument of reconciliation. On the question being put, 174 voted against Mrs. TATE'S amendment and 38 in favour. The Bill was read a third time, and passed without amendment.

War Damage in the South.

AT the end of a debate which lasted nearly six hours in the House of Commons on 27th October, both the House and the country were better informed concerning the progress of the measures taken to counter the devastation produced by the flying bombs in South-Eastern England. Some, like Mr. ROBERTSON, the member for Streatham, who opened the debate, thought that "a lawyer is not the man for this job," but a "restless dynamic driver," and "if a lawyer succeeded in the job he would be a freak lawyer." Others, like Mr. W. H. GREENE,

the member for Deptford, Sir PERCY HARRIS, for Bethnal Green, and Mr. GOLDIE (Warrington) had high words of praise for Sir MALCOLM TRUSTRAM EVE and for Mr. WILLINK. "Lawyers," said Mr. GOLDIE, "are proverbially unpopular in the House of Commons, but one of the best things ever done by the Government was to persuade the present Minister of Health to forsake the Temple for Westminster." Mr. ROBERTSON rightly described the problem as "a race between vital repairs and disease," and among the remedies suggested in the course of the debate were the division of London into four or six areas, the reduction of the number of Ministries that have to deal with the job, the requisitioning of all property capable of being lived in by bombed-out people, the enrolment of members of the National Fire Service, of civil defence workers and of Italian prisoners, increased production of baby bulldozers, and the abandonment of the "cost plus system of remuneration for a lump sum basis," as under the former system "it was to the interest of those doing the work to make as much work as possible," while the latter provided a greater incentive. Among points made for the Government by Mr. HICKS, for the Ministry of Works, and Mr. WILLINK, the Minister of Health, were: When the flying bomb attacks commenced there were about 24,000 men in the London Civil Defence Region employed on war damage repairs for local authorities. By releases from the National Fire Service and the Forces and transfers from the provinces and from other work in London the labour force has been built up to 132,000. In the London area there are practically two craftsmen employed for every labourer. The total loss of houses in the London Region was now 109,000 and on 22nd September an estimated number of 800,000 needed repair of some kind to make them reasonably comfortable. For four weeks from 22nd September something like 120,000 of the 800,000 houses had been brought into a reasonable state of comfort. At the beginning of the attack local authorities held, under the authority of the Ministry of Health, property empty and available for 26,000 people. Since that date 11,300 properties had been requisitioned, and since the flying bomb attacks had commenced, 80,000 people had been rehoused in requisitioned properties. Production of materials had been increased. Production of tiles had increased threefold, and 100,000 of a new kind of emergency window with one plate of glass and a further 10,000 a week had been and were being delivered. Both Sir MALCOLM TRUSTRAM EVE and Mr. WILLINK have come to their latest task with tremendous qualifications and experience, Sir Malcolm as Chairman of the War Damage Commission and Mr. Willink as Special Commissioner for the Homeless. Their selection for their present task is both a tribute and a challenge.

Social Security.

The two outstanding speeches of the debate in the Commons on social security on 2nd and 3rd November were those of Sir WILLIAM JOWITT and Sir WILLIAM BEVERIDGE. The former pointed out that the contributory principle on which the scheme was based had been a central feature of every Government scheme since 1911. The second important point was that it was based on universality and involved premiums which they hoped all would be able to pay. He did not believe that the scheme sounded the death-knell of the approved societies. If as a result of the scheme people became more insurance-minded, they might be able to avail themselves of additional assurance which the societies would no doubt offer. Sir WILLIAM BEVERIDGE referred to his report as "a large and rather noisy baby" which he had left on the doorstep of His Majesty's Government in Whitehall, and which the Government had taken in and cared for. The separation had taken the abnormal form of keeping the child where it was and evacuating the parent from Whitehall. He added that the admission of paternity was always a slightly delicate operation, particularly in a maiden speech, and he thought that the Government's plan was the same baby which he had left on their doorstep two years ago. The first step towards the achievement of the plan was taken on 3rd November when Mr. ATTLEE introduced the Ministry of Social Insurance Bill providing for the creation of an office for which Sir WILLIAM JOWITT, at present Minister without Portfolio, has been designated. There will be transferred to the new Ministry, with few exceptions, the following functions: The functions of the Minister of Health and the Secretary of State for Scotland with respect to national health insurance, old-age pensions, widows', orphans', and old-age contributory pensions, and supplementary pensions; the functions of the Minister of Labour and National Service with respect to unemployment insurance and unemployment assistance; and the functions of the Home Secretary with respect to workmen's compensation. Sir WILLIAM JOWITT has intimated that one of the first Bills next to be introduced will be one to provide for children's allowances.

War Damage to Licensed Premises.

EFFECT is to be given to the recommendations contained in the recent report of the Committee on War Damaged Licensed Premises and Reconstruction in a Bill, the Licensing Planning (Temporary Provisions) Bill, which has been given its first reading in the House of Commons. Under it the Home Secretary will be empowered to create licensing planning areas. Each area will consist of a licensing district or two or more contiguous licensing districts, wherever there has been extensive war damage. The licensing planning committee for each area will consist of members elected in equal numbers by the licensing justices and the local planning authorities respectively, with a secretary to be appointed by the Home Secretary. A licensing planning committee may apply to include in its area any licensing district containing an "overspill" area. The L.C.C. planning area will cover all the administrative county of London except the City of London. Every licensing planning committee must aim at securing that in its area the number, nature and distribution of licensed premises meet local requirements. In this matter special attention must be paid to actual or proposed redevelopment in the area. Proposals will be formulated by the committee for "planning removals" of licences from one set of premises to another in the same area, and for the surrender of licences by agreement, subject to the confirmation of the Ministry of Town and Country Planning. There are the usual provisions for objections to the Minister and public local inquiries. Where a planning removal has been confirmed by the Minister the licensing justices are to grant the removal if satisfied as to conditions applying to the premises and the applicant. "Temporary premises removals" will also be authorised by the licensing justices on a certificate from the licensing planning committee.

Laws of the Air.

INTERNATIONAL collaboration in the regulation of air transport is envisaged by the Government in a White Paper (Cmd. 6561, price 1d.) published on 17th October. The paper states that before the war the international regulation of civil aviation was concerned mainly with its technical aspects, e.g., safety regulations, rules of the air, air worthiness, radio and meteorological procedure, and the licensing of personnel and aircraft. Moreover, there was no single international convention which commanded universal support. His Majesty's Government propose that a new convention should be drawn up to make provision for the regulation of international air transport. This convention would define the degree of freedom of the air to be enjoyed by the ratifying States. It is proposed that freedom of the air should extend to: (*a*) the right of innocent passage through a State's air space; (*b*) the right to land for non-traffic purposes (refuelling, emergency, etc.); (*c*) the right to disembark passengers, mails and freight from the country of origin of the aircraft; (*d*) the right to embark passengers, mails and freight destined for the country of origin of the aircraft. The convention would also, *inter alia*: (i) define the international air routes which should be subject to international regulation; these would be reviewed from time to time as necessary; (ii) provide for the licensing of international air operators who undertook to observe the convention and to abide by the rulings of the appropriate authority, and for the withdrawal of the licence in the event of a breach of the obligations; (iii) provide for arbitration in matters of dispute; (iv) prescribe safety regulations, such as rules of the air, airworthiness, licensing of personnel and aircraft, ground signals, meteorological procedure, etc. (The domestic airlines operating within the territories of the member States would not be governed by the convention, but it is hoped that States would voluntarily apply the agreed standards to their internal services.) For the administration of the convention, it is proposed that an international air authority should be established and under it (i) an operational executive with subsidiary regional panels; and (ii) sub-commissions to deal with technical matters. It is finally stated that the proposals are of a provisional nature and may be modified in the light of views expressed by other countries.

Juvenile Courts.

THE Council of the Magistrates' Association has stated, in its recently published annual report, a number of conclusions which it has reached as the result of an examination made after the *Hereford* case. While expressing the view that there should be no age limit for the appointment of magistrates to the juvenile courts, the Council holds, on the other hand, that care should be taken in making magisterial appointments to choose persons specially fitted for work in the juvenile courts. Each bench, it is stated, should have a permanent chairman, and, outside the metropolis, should appoint a sub-committee to consider the names of magistrates suitable for appointment to the juvenile court panel. It is recommended that justices on those panels prepare themselves for their work by reading, attending lectures and conferences, visiting institutions, and sitting in court as observers. The Council emphasises the desirability both of retaining the right of trial by jury for young persons, and of having an investigation before a finding of guilt. The investigation of home conditions should be for the probation officer and the school report presented by the education authority, and it is emphasised that it is not desirable to amend the law so that it should be obligatory for the court to hand to the parent or guardian a full copy of any report handed to them. Existing powers of punishment are not considered adequate, and it is recommended that justices should be empowered to send young

persons to special camps for a period not exceeding six months, with twelve months' supervision to follow. Educational facilities in remand homes should be improved, but the law should not be amended so as to enable courts to order a fine or detention together with probation. The words "conviction" and "sentence" should not be used, and the term "finding of guilt" should be retained. Neither the LORD CHANCELLOR nor the HOME SECRETARY, it is stated, should have power outside the metropolitan area to nominate or approve the membership of the juvenile court panel. It is further recommended that two women magistrates should be capable of holding a court in the provinces as well as in the metropolitan area. Another interesting proposal is that either a notice should be displayed in the waiting room of all juvenile courts, or, better still, a leaflet should be sent to parents when their attendance is required, stating the rights as to trial by a superior court where there are charges of indictable offences, as well as the rights as to appeal, the calling of witnesses and legal representation. Copies of these recommendations have been sent to the Lord Chancellor's department and to the Home Office.

Divorce in U.S.S.R.

MR. PAUL WINTERTON, correspondent of the *News Chronicle* in Moscow, described in the issue of that paper for 26th October "the first divorce trial heard in the Moscow court for twenty-seven years." It took place, he stated, "under the new social laws, which, among other things, decree that divorces shall no longer be obtainable "over the counter" at a marriage and divorce bureau, but only after proper notification in the Press and a public hearing before a judge." Omitting the picturesque details provided by Mr. WINTERTON as to the clothes and mannerisms of the judges and officials of the court, it appears that the judge sits with two assessors, and there is also a court secretary, and an official somewhat analogous in his function to our King's Proctor, except that she (in the case described the official was a woman) is present to watch the case in the public interest. As the case was in a sense historic, it may be important to record that it was *Golubkov* v. *Golubkov*. From the point of view of divorce law reform in this country, it is more important to record that the case had already been through a preliminary stage before the District People's Court, with the sole object of seeking a reconciliation between the parties. Recent comment of a High Court Judge on circuit in this country on the ease with which one party to a marriage leaves another after a petty quarrel, thus providing grounds for divorce after the lapse of the statutory period, lends support to the view that a hearing in chambers or before the magistrates with a view to a reconciliation should be an indispensable preliminary to every divorce at least where desertion is the ground alleged. There was no pretence that one of the parties was not as willing as the other that there should be a divorce, and both parties were present to state why he or she wanted to be parted from the other. The issue of alimony appears to have been decided at the hearing, in the interests of the child of the marriage, although apparently the petitioner was willing to forgo alimony. The amount ordered was one-fourth of the husband's salary. On the other hand, the court costs apparently were borne by the petitioner, 1,000 roubles (or two and one-half months' salary), and another 150 roubles at most for the advertisement in the paper and the lawyer's fee. Comparisons between the law and procedure in divorce of two countries so very different from each other as Britain and Russia would be not merely odious but misleading, but few will disagree with Mr. WINTERTON'S general conclusion that Russia has every reason to be proud of her divorce court.

Recent Decision.

In *Port of London Authority* v. *Essex Rivers Catchment Board*, on 3rd November (*The Times*, 4th November), the Court of Appeal (SCOTT and DU PARCQ, L.JJ., and UTHWATT, J.) held that the Land Drainage Act, 1930, did not impose on a drainage board on every occasion when it was about to make a rate an antecedent duty to make a valuation of all lands not assessed to Sched. A. If at any time the board had reason to think that there might have been any substantial change of annual value, it must give consideration to the matter, but if it did not think the change sufficient to require a new valuation it was free to leave matters as they were.

Mr. Roland Burrows, K.C., and Sir Harry G. Pritchard have been appointed members of the Boundary Commission for England by the Home Secretary and the Minister of Health respectively. The Speaker, as chairman of the commission, has appointed Mr. Burrows deputy-chairman. The Registrar-General and the Director-General of Ordnance Survey are *ex officio* members of the commission. Mr. A. C. Marples has been appointed secretary of the commission, and communications should be addressed to him at the House of Commons. The immediate task of the commission will be to report on the redistribution of the "abnormally large" constituencies scheduled in the House of Commons (Redistribution of Seats) Act, 1944.

Conversion in Lunacy.

THOUGH in lunacy the first consideration is the good of the patient himself, the courts and the Legislature are also anxious to preserve the legitimate expectations of the family, and we propose to discuss the effect of a change of investment (in the wider sense) in lunacy.

It is provided by the Lunacy Act, 1890, s. 123 (1), that "the lunatic, his heirs, executors, administrators, next of kin, devisees, legatees and assigns shall have the same interest in any moneys arising from any sale, mortgage or other disposition under the powers of this Act which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage or disposition, if no sale, mortgage or disposition had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged or disposed of." Although the net is spread widely here, it is limited to "moneys arising from any sale, mortgage or other disposition under the powers of this Act." In 1882 there was a similar provision applicable, namely, s. 119 of the Lunacy Regulation Act, 1853, but it dealt only with the conversion of land, and in that year the case of *Re Freer*, 22 Ch. D. 622, came before Chitty, J. (as he then was). A testator had made a specific legacy of railway stock, but was subsequently found lunatic, and the railway stock was sold and the proceeds invested in Consols. The learned judge pointed out that the jurisdiction in lunacy was only a power of administration, and that he was not prepared to say that, if the court had directed that the proceeds of the railway stock should for all purposes represent the stock, such a direction would alter the rights of the parties. "The law," said he, "places the estate of the lunatic in the same position as if there had been no lunacy, except for the 119th section of the Lunacy Regulation Act, 1853, which provides that the proceeds of land shall, notwithstanding its conversion, preserve the character of land and belong to the same persons who would have been entitled to the land if there had been no conversion." It was decided that there was an ademption of the stock sold in the lunacy. The Lunacy Act, 1890, s. 123, extended the protection given by the earlier Act to the conversion of land to all classes of property. Notwithstanding this extension, Russell, J. (as he then was), held in *Re Walker* [1921] 2 Ch. 63 that that section did not apply to the bank balance of a testator which under an order in lunacy had been paid into court and invested in India stock. "The section," said his lordship, "protects the legatee of a lunatic under any will which he may have made, in regard to any unapplied proceeds of the sale of property comprised in a specific bequest. If part of his estate has been converted in the course of the lunacy proceedings and there remain unapplied moneys, part of the proceeds of conversion, the specific legatee of the converted property is to have the unapplied balance . . . With the exception of those statutory provisions—the object of which was to protect specific gifts and to prevent ademption of them—the old law still prevails. Apart from questions of double portions, there can be no ademption of a residuary gift."

Since that last-mentioned case, the Lunacy Act, 1922, s. 2 (8), provides that "amongst the powers which by virtue of s. 27 of the Lunacy Act, 1891, may be exercised by the Master there shall be included the power of making orders for the purpose of preserving so far as possible in the administration of the property of the lunatic the quality, tenure and devolution of the property."

The question has again arisen in *Re Palmer* [1944] Ch. 374, under somewhat different circumstances. A testatrix who was the owner of two sums of stock inscribed in her name had given a mandate to the Bank of England to pay the interest thereon to her account at G's Bank. By her will she gave all such stocks, shares, moneys and things as should at her death be standing in her name or at her disposal and be in the care, custody or possession of G's Bank to certain nephews. An order was subsequently made in Lunacy, ordering the stocks into court. Now it is clear that the nephews were entitled to stocks in the care, custody or possession of G's Bank *at the testatrix's death*, but they were not entitled to other stocks. Uthwatt, J., pointed out that there could not be ademption, as the testatrix's death was the date at which the contents of the gift were to be determined. Consequently as these stocks did not come within the description given in the will they fell into residue. Subject to s. 123 above referred to, "the fact of lunacy does not result in any particular rule of law being applicable in determining the effect of the will of a lunatic."

Section 123 "does not apply to purchases out of or investments of cash, but only to sales etc. . . . The ordinary rule is that conversion under an order of the court takes effect for all purposes, unless the order provides otherwise or unless there is a statutory provision to the contrary" (Heywood and Massey's "Lunacy Practice," 6th ed., p. 363).

If it is intended that the nature and character of the personal estate should not be altered by its investment in the purchase of real estate, the property should be conveyed to the committee or receiver in fee simple in trust for the said [patient] his executors, administrators and assigns as part of his personal estate (see Form 105). That was, in effect, the method adopted with success in *A.-G.* v. *Ailesbury*, L.R. 12, A.C. 672. According to

Theobald's "Law Relating to Lunacy," it is usual to provide in the order that the purchased land should remain personalty (p. 356). Where, however, there is no reference to the purchased freehold being regarded as real or personal estate it will be real estate (*Re Silva* [1929] 2 Ch. 198). In that case by an order of the Chancery Division funds in court belonging to a patient were invested in the purchase of a freehold residence for him. The order was entirely silent on the question whether it was to be treated as realty or personalty, so that it was deemed to be realty. It was subsequently sold and the proceeds of sale were treated as still real estate on the death of the patient in 1927, and as such passed to the patient's heir at law under the Administration of Estates Act, 1925, s. 51 (2).

It is provided by the last-mentioned subsection that any beneficial interest in real estate, to which a lunatic living and of full age at the commencement of the Act, and unable by reason of his incapacity to make a will, who thereafter dies intestate without having recovered his testamentary capacity, was entitled at his death, shall, without prejudice to any will of the deceased, devolve in accordance with the general law before the commencement of the Act applicable to freehold land.

It must be remembered that in the case of any sane person dying intestate after 1925 his property, real and personal, is held upon trust for sale, so that no question as to the rights of an heir at law can arise (Ad. of E.A., 1925, s. 33) in the following circumstances: A (a sane person) died after 1925 intestate and entitled to a freehold house. Under s. 46 of that Act the residuary estate of the intestate passed to his mother, who was a lunatic, and had been so at the commencement of the Act. On the mother's death s. 51 (2) does not apply, as the mother's interest was in the nature of personalty, and there is no provision for reconverting the personalty into realty.

Further, the court may direct the settlement of a lunatic's property—

(*a*) where the lunatic has a title and the property would not devolve with the title under his will or intestacy;

(*b*) where the property has been acquired under a settlement, will or intestacy or represents property so acquired;

(*c*) where for any special reason the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the lunatic's death or intestate or under his will.

In *Re Gower's Settlement* [1934] 1 Ch. 365, the court was concerned with an infant, but in his judgment Clauson, J. (as he then was), said "The language used in s. 171 of the contemporaneous Law of Property Act, 1925, shows quite clearly that the Legislature treats a power to settle a lunatic's estate tail as extending to a power to put into settlement the enlarged estate created by a disentailing deed."

Under the Settled Land Act, 1925, s. 28, a committee or receiver may in the name of the lunatic under an order in lunacy exercise the powers of a tenant for life under the Act. No question of conversion here arises, as capital money "shall for all purposes of disposition, transmission and devolution be treated as land" (s. 75 (5); *Re Cartwright* [1939] Ch. 90 (C.A.)).

If a committee without authority buys land in the name of a lunatic and pays for it out of the personal estate, the next of kin may approbate or reprobate the purchase ("Theobald," p. 355).

A Conveyancer's Diary.

The Necessity for Writing.

At common law and in equity there is no need for any transaction to be done or recorded in writing. Writing is valuable as evidence, but is never requisite to validity. A specialty may seem to be an exception, but it takes its force from the presence of the seal, not from the writing. This simple position has been modified by statute in a number of ways, at some of the more important of which I propose to glance in this article, which, however, does not pretend to be an exhaustive treatment of a very large subject.

Section 4 of the Statute of Frauds, 1677, provides that "no action shall be brought" upon certain sorts of contract "unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised." One class of agreement mentioned in s. 4 used to be "contracts for the sale or other disposition of land or any interest in land": such contracts are now taken out of s. 4 and are covered by the Law of Property Act, 1925, s. 40 (1). The other classes, which are still dealt with by s. 4, are as follows: (1) Contracts by a personal representative "to answer damages out of his own estate." This must be a very small class, as few personal representatives seem likely to wish to make themselves personally responsible for the liabilities of their deceased; (2) Contracts "to answer for the debt, default or miscarriage of another person"; this is a class about which there is a good deal of case-law, into which it would scarcely be suitable for me to enter here; an important distinction has been taken between contracts of guarantee, which are within those words of s. 4, and contracts of indemnity, which are not, and so may be oral; (3) Contracts "made in consideration of marriage," not, of course, contracts to marry; this class may well have occasional importance in Chancery practice, especially as affecting the enforceability of oral contracts to pay money or transfer property in consideration of the marriage of another; (4) Contracts "that are not to be performed within the space of one year from the making thereof." On this point, too, there is a good deal of case-law and some fine distinctions. The practical rule is that one should look up the cases fully whenever there is a question as to the validity of a contract whose terms do not clearly provide for the completion of the obligations of both parties within a year from the date of the contract.

In all those cases, as with the much better known case of contracts to sell land, the statute does not avoid the contract, or render it voidable, in the absence of the necessary writing: it merely provides that no action shall be brought upon it. The way was thus left open for the equitable doctrine of part performance, under which in some circumstances contracts not enforceable at law through the absence of writing were, and still are, enforceable in equity, and also for the exercise of any available extra-judicial remedies on the contract, as, for instance, a lien. It is also to be borne in mind that it is not necessary for the contract itself to be in writing: it is sufficient for enforcement against A if a memorandum or note of it is signed by A or his agent. This is a point which may well matter considerably in connection with contracts to sell land, and is sometimes forgotten. Thus, some years ago, I saw a case where a vendor and a purchaser had agreed together orally for the sale of a house, and had arranged for the vendor to get his solicitors to send the purchaser a draft contract in the usual way. Thus there was a contract, but neither party could enforce it. While the purchaser was still discussing the terms of the written agreement with the vendor's solicitors, he received a letter from the estate agents who had acted for the vendor, reading somewhat as follows: "We understand that you have agreed with our client Doe to purchase Whiteacre for £*x*, and that completion has been fixed for 1st April, next. Our client's solicitors are Messrs. Roe. Please let us know who are the solicitors acting for you so that the draft contract may be sent to them. In the meantime perhaps you would be good enough to let us have a cheque for the usual 10 per cent. deposit to be retained by us as stakeholders till completion." The reasons for the despatch of this letter are a subject for surmise, but the purchaser's advisers were very glad to have it in their possession when the negotiations for the draft contract looked like taking a difficult turn. For the letter was a perfect memorandum of the agreement, signed by the vendor's agent, while there was no writing on which the purchaser could be charged. It is true that there is a reference to the preparation of a draft contract, but, as the first sentence of the letter plainly refers to a concluded offer and acceptance, the vendor could scarcely succeed in an action against him for specific performance based on the letter, which embodied all the items which must appear in a memorandum.

Another section (s. 17) of the Statute of Frauds made a like provision for contracts to sell goods of the value of £10 or more. This section is now replaced by s. 4 of the Sale of Goods Act, 1893. In this instance, however, the section provides two other ways in which an oral contract can become enforceable by action, viz., that the buyer shall accept part of the goods sold and actually receive the same, or that the buyer shall "give something in earnest to bind the contract, or in part payment." There are a considerable number of cases on this section also and on its predecessor, but they hardly lie within the ambit of this column, and I only call attention to the section for completeness. I cannot help thinking that there must be an enormous number of contracts which could not be enforced, by reason of this section, if it happened to pay either party to get out of them. For instance, at the prices now ruling, almost every contract to buy a "non-utility" suit of clothes is apparently within the section, not to mention such things as a contract to buy one's portrait from a painter.

On matters of property, there are three very important and comparatively little known sections of the Law of Property Act, ss. 53–55. None of them is new, but they collect compendiously a number of provisions scattered in earlier enactments, mainly the Statute of Frauds. It is perhaps convenient to take s. 54 first: "(1) All interests in land created by parol and not put into writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only (2) Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can reasonably be obtained without taking a fine." I call particular attention to the limited character of this exception. The parol lease for three years must take effect in possession and it must be at the best rent. An oral agreement at a full rent for a lease for a year beginning next week creates a tenancy at will only, and so does an oral agreement for a lease for a year beginning now if the rent is a nominal one or anything but the

full market price. It is also to be borne in mind that a tenant for life is not empowered by the Settled Land Act to make an oral lease at all; under s. 42 (1) (i) all his leases must be by *deed*, except as thereinafter provided, and the exception for leases of under three years only affects such leases if they are in writing. Trustees for sale and personal representatives have referentially the same powers as a tenant for life and are thus subject to the same conditions.

Law of Property Act, s. 53, is as follows: "(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—(*a*) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law; (*b*) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will; (*c*) a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing, or by will. (2) This section does not affect the creation or operation of resulting, implied or constructive trusts." Section 55 enacts that nothing in ss. 53 and 54 shall "(*a*) invalidate dispositions by will; or (*b*) affect any interest validly created before the commencement of this Act; or (*c*) affect the right to acquire an interest in land by virtue of taking possession; or (*d*) affect the operation of the law relating to part performance."

The effect of those provisions is that no interest, legal or equitable, in land can be created or transferred by word of mouth. A trust of personalty can still be created by word of mouth, but, once it is created, the equitable interests arising under the trust cannot be so transferred: see s. 53 (1) (*c*), which differs from the preceding sub-paragraphs in that it applies to property of all sorts and not only to land. That is not to say that no trust of land can arise except under a written instrument (or a will), because s. 53 (2) preserves the existing rules relating to resulting, implied and constructive trusts. But what one cannot do effectively is to say: "I hold Blackacre on trust for A" or "I transfer my equitable life interest in £1,000 War Loan to A." But one can effectively say: "I hold my £1,000 War Loan on trust for A." I am not altogether sure that these distinctions between realty and personalty are still necessary in an Act which was supposed, *inter alia*, to assimilate the rules affecting realty and personalty with one another. In the days of the Statute of Frauds land was much more important than personalty and so stricter rules for land were justified. It would now be logical either to provide that declarations of trusts of realty need not be manifested by writing; or, if that is too much for the stamp duty authorities, to require that trusts of personalty shall be so manifested.

Landlord and Tenant Notebook.

Surrender by Acceptance of New Tenant.

WAR conditions have been responsible for many changes of address and also for impatience in the matter of formalities; many a landlord had found demised premises occupied by someone other than the grantee, and delicate questions may then or thereafter arise as to whether the conduct of landlord, departed tenant and new comer, viewed as a whole, has resulted in the creation of a new tenancy. I discussed some aspects of this problem in the "Notebook" for 15th January last (88 SOL. J. 22, "Substituted Tenant"); now I propose to examine a different group of decisions, in which the question was approached from the standpoint of surrender by operation of law.

First, it will be convenient to mention two decisions in which the point was not directly raised. It was held in *Roe d. Earl of Berkeley* v. *Archbishop of York* (1805), 6 Ea. 86, that even a cancellation of a lease coupled with the recital of its surrender in a new lease could not in themselves effect surrender by operation of law (what "cancellation" consisted of is not clear, but we are told that part and counterpart were cancelled and delivered to their signatories, at all events, after an assignment of the term). And in *Mollett* v. *Brayne* (1809), 2 Camp. 103, that a landlord who, in the course of a dispute with his tenant, told the latter he could quit when he pleased, did not thereby accept a surrender. These two cases, in one of which some and the other of which no formalities were sought to be observed, have played their part in shaping the law on the subject with which I am now concerned.

The second-mentioned authority was distinguished in *Stone* v. *Whiting* (1817), 2 Sta. 235, which may be considered fairly to exemplify a state of affairs which is not uncommon. The plaintiff let premises to the defendant, who sub-let them to a third party; the defendant and the third party then approached the plaintiff, who agreed to discharge the defendant and accept the sub-tenant as tenant. The action was brought for rent since accrued due, and it was held that the agreement to substitute distinguished the case from that of *Mollett* v. *Brayne*.

To some extent, *Walls* v. *Atcheson* (1826), 3 Bing. 462, was on the same lines. Apartments were let by the plaintiff to the defendant on a yearly basis; he left at the end of the first quarter, and nearly a month later she let to someone else at a smaller rental. He then paid something on account. She let to others for short periods, and then found she was unable to obtain tenants, so brought the action for rent due to date, less what she had received. The argument was that she had let on the defendant's account, and *Mollett* v. *Brayne* was cited to negative the suggestion of a surrender. The court did not, indeed, hold that there had been a surrender when giving judgment for the defendant: Best, C.J., said she had precluded the defendant from occupying the premises, and thus rescinded the agreement dispensing with the necessity of a surrender; and there had been no notice that she was letting on his account. Objection may well be taken to the notion that an agreement not providing for rescission can be rescinded unilaterally; but I submit that the same result could have been achieved, as regards the periods of the letting, at all events, by pleading eviction.

Walker v. *Richardson* (1837), 2 M. & W. 882, arose out of rather more unusual happenings. For present purposes, the essential facts were that in 1822 the Bishop of Durham granted a long lease to Messrs. H and R; that the grantees assigned their term to the plaintiffs in the action; that in 1829 the Bishop granted a lease of the same premises to the plaintiffs. In order to establish their title the plaintiffs produced this lease and the old lease "in a cancelled state" and called evidence to show that it was usual to return such leases before a renewal or regrant. Abinger, J., and his colleagues held that a jury might infer surrender from this evidence, and distinguished *Roe d. Earl of Berkeley* v. *Archbishop of York* in that there was no evidence of user in that case.

The last case I will mention is *Nickells* v. *Atherstone* (1847), 10 Q.B. 944, which was, like *Stone* v. *Whiting*, an action for rent. In February, 1844, the defendant took apartments from the plaintiff for a term of three years; in August he found he had to live elsewhere, removed his effects, and asked the plaintiff to take the rooms off his hands. The plaintiff said he would try, and later on let the apartments to a third party for three years at a higher rental than that reserved by the lease to the defendant. But the third party became insolvent after paying two quarters' rent, and in the action the plaintiff claimed a year's rent, less what he had received from the other. Again *Mollett* v. *Brayne* was distinguished: in the older case there was nothing to bring about surrender by operation of law; in this case the defendant had not only given up possession but consented to the creation of a new estate.

The above decisions illustrate circumstances in which it is possible to establish the surrender of a tenancy without adducing documentary evidence. Their effect was limited to rights and obligations arising out of the tenancy alleged to be surrendered, and in the second case mentioned, *Walker* v. *Richardson*, the title of the second grantee was put in issue by strangers to both the first and second grant. The authorities show, then, that where a surrender must be proved, the mere fact that during the currency of a tenancy the landlord lets or purports to let to some other party will not suffice.

It is rather surprising that the position of the new occupier has seldom, in these cases, been the subject of dispute. The law appears to be this: if there has been no surrender and the relationship between landlord and newcomer amounts to a tenancy, there are concurrent leases, the second grantee becoming landlord of the first; if there has been a surrender there is, of course, a new tenancy without complications. According to the judgment of Best, C.J., in *Walls* v. *Atcheson*, it would seem that the persons to whom the premises were "let" after the departure of the defendant were tenants because of the "rescission"; apart from this they would, of course, as between themselves and the plaintiff, have been able to rely on the law of estoppel.

Obituary.

MR. J. H. THORPE, K.C.

Mr. John Henry Thorpe, O.B.E., K.C., Recorder of Blackburn and Deputy Chairman of the Middlesex Quarter Sessions, died on Tuesday, 31st October, aged fifty-seven. He was educated at Leatherhead and Trinity College, Oxford, and was called by the Inner Temple in 1911. From 1919 to 1923 he was Conservative M.P. for the Rusholme Division of Manchester. In 1935 he took silk and was made a Bencher of his Inn in 1941. Since 1942 he had been Chairman of the Central Price Regulation Committee.

MR. C. M. KNOWLES.

Mr. Charles Matthew Knowles, LL.B., barrister-at-law, died on Thursday, 2nd November. He was called by the Middle Temple in 1903.

The quarterly meeting of the Lawyers' Prayer Union will be held on Tuesday, 28th November, at 5.30 p.m., in the Council Room of The Law Society, preceded by half an hour for tea. The speaker on this occasion will be Dr. Martyn Lloyd-Jones, and his subject will be "Wisdom—True and False." He is the well-known minister of Westminster Chapel.

To-day and Yesterday.

LEGAL CALENDAR.

November 6.—One day in October, 1781, when John Shepherd was taken to Tyburn to be hanged for forgery, with several other convicts, a reprieve arrived just as the executioner was tying the rope round his neck. The judge who tried him had referred his case for the consideration of his brethren on a point of law, but spoke so low that the prisoner himself did not hear. He was saved because the judge happened to remember his name and took action to snatch him from the gallows. The respite, however, profited him little, for on the 6th November the judges met at Serjeants' Inn and confirmed the conviction.

November 7.—On the 7th November, 1735, Sir James Fergusson became a Lord of Session, taking the judicial title of Lord Kilkerran from his family's estate. He died in 1759. He was described as "undoubtedly one of the ablest lawyers of his time. His knowledge was founded on a thorough acquaintance with the Roman jurisprudence, imbibed from the best commentators of the pandects, and with the recondite learning of Craig." He collected and digested the decisions of the Court of Session from 1738 to 1752 and it was said that his work evinced "the clearest comprehension and the soundest views of jurisprudence, and will ever serve as a model for the most useful form of law reports."

November 8.—On the 8th November, 1831, an inquest was held on the body of a fourteen-year-old boy offered for sale at the dissecting-room of King's College by John Bishop and James May, two men who had previously supplied subjects for dissection. The crimes of Burke and Hare, brought to trial less than three years previously, was still fresh in memory, and the condition of the corpse aroused such suspicion that the police were called in. They arrested Bishop and May and another man, Thomas Williams, who had assisted them. The jury brought in a verdict of wilful murder against some person or persons unknown, but expressed the strong belief that the three men were concerned in the transaction. In the following month they were tried and convicted. May, however, being afterwards reprieved. The method of the prisoners had been to find some human derelict whom they took home for the night, produce unconsciousness by means of a drink mixed with laudanum and plunge their victim head first into a well in the garden, suspending him by the feet by means of a rope made fast to a paling. This device allowed the liquor to run out of the mouth. After condemnation, Bishop confessed that this was how they had killed the boy, who came from Lincolnshire. He admitted having handled between 500 and 1,000 corpses in twelve years, but declared that he had only been concerned in three murders.

November 9.—On the 9th November, 1673, Sir Heneage Finch, the Attorney-General, was appointed Lord Keeper and soon afterwards raised to the peerage as Baron Finch of Daventry. Two years later he became Lord Chancellor, and in 1681 Earl of Nottingham. He died in 1682. In an age of violent factions he attached himself to none, behaving always with forbearance and wisdom. Blackstone describes him as "one of the greatest abilities and the most uncorrupted integrity." His tenure of office is a milestone in the development of the Court of Chancery and the law of equity, and externally he kept up the dignity of the Chancellorship with splendour and liberality.

November 10.—When Jeffery Henville, a tailor, of Charles Street, St. James's, died bequeathing his personal estate to Anne Ferte, his housekeeper, it was a great shock to his relations. Accordingly, James Farr, a relative, and William Sparry, his son-in-law, a disreputable attorney, proceeded to make a new will for him, and William Biddle, the landlord of the "Ship and Anchor" outside Temple Bar, consented to act as witness. Unfortunately for them they were detected, convicted of forgery and hanged at Tyburn on the 10th November, 1762. They behaved penitently and with decent resignation. Farr fixed the halter himself with the knot under his left ear saying: "I have but a few moments to stay in this world. I have found it a wicked world—a very wicked world indeed!" The others said nothing.

November 11.—George Snigge, the son of a mayor of Bristol, was called to the bar by the Middle Temple in 1556. He was chosen Recorder of his native city and became a serjeant in 1604. In the same year he was appointed a Baron of the Exchequer. He died on the 11th November, 1617, and was buried at Bristol in St. Stephen's Church.

November 12.—On the 12th November, 1725, the benchers of Lincoln's Inn had before them a proposal by the York Buildings Company to make a reservoir in the Inn. It was to be 70 feet in diameter and 7 or 8 feet deep, and it was to be surrounded by a stone coping and iron rails. It was to be kept filled with Thames water. The company was to keep the Great Square watered in the summer to free it from dust. They were also to keep the Society's fire engine in good order. They were to be permitted to lay pipes to convey water from the reservoir to the Temple. The reservoir was to be "made so as to fling up the water from some proper figure to be fixed in the middle of it." Further, "in case of fire the water can be forced into leathern pipes by the great engine at York Buildings [in the Strand] and from the superior height of water in their great reservoir at Marylebone Fields, by fixing the leathern pipes to fire plugs made in the mains which distribute the water through the town, from which leathern pipes the water can immediately be directed in much greater quantities, and with greater force and certainty on the fire, than by any other engine." It was directed that the proposals should be considered.

Burning Women.

In a recent newspaper article, Dr. Inge recalled that "as late as 1813 women were burnt at the stake" in Germany. It is likewise interesting to note that only twenty-four years earlier a woman was burnt in England for coining. She was Christian Murphy, and on the 18th February, 1789, after several other criminals had been hanged before the debtors' door at Newgate she was brought out, placed standing on a stool and fastened to a stake. She was strangled by the stool being taken from under her, and afterwards she was burnt. The reason she was so punished was that coining was legally treason, and that in such a case this form of death was substituted for the hanging, drawing and quartering awarded to the male traitor, "for," wrote Blackstone in his "Commentaries," "as the natural modesty of the sex forbids the exposing and publicly mangling their bodies, their sentence (which is to the full as terrible to sense as the other) is to be drawn to the gallows and there to be burnt alive." Later in his work he adds reassuringly that the humanity of the English nation has authorised an almost general mitigation of such part of the sentence as savoured of torture and cruelty and that there were very few instances "and these accidental or by negligence" of any person being burnt till previously deprived of sensation by strangling. Husband murder was likewise treated as treason and involved burning.

Our County Court Letter.

The Washing of Radishes.

In *Hughes* v. *Wilkes and Others*, at Bromsgrove County Court, the claim was for £100 as damages for loss of crops and for an injunction to restrain the damming of a stream. The case for the plaintiff was that he had bought 14½ acres of land in 1940 for £400. The land adjoined a stream which ran along the side of the road, and between June and October in each year the six defendants had been accustomed to bring radishes to wash in the water course. The latter was dammed to form a pool in which the washing was done, and the only means of escape for the water was into the plaintiff's land. The result was that 2 acres had been so damaged that in 1941 a crop of mangolds and swedes was a complete failure, and the loss was between £20 and £30. In 1942, the plaintiff planted oats in the 2 acres, but the crop was again lost. In 1943, the field was allowed to go to grass, but the animals would not eat the herbage, which was soured. The cause of action was that the plaintiff owned the stream; alternatively, that he possessed the riparian rights; thirdly, that the defendants had caused the water to trespass on his land. The defendants' case was that the stream was normally only 1 inch deep, and it was never completely dammed. The water never rose more than 6 inches high, and none had ever overflowed into the plaintiff's land. The level of the field was too high above the stream for the water to overflow. Moreover, the whole of the 2 acres was wet and boggy, so that the tractor stuck in the land when an attempt was made to use the plough. The land was so boggy that rushes had grown on it. The defendants had used the stream for the purpose of washing radishes for upwards of twenty years. His Honour Judge Roope Reeve, K.C., held that there was no evidence of injury to the land from the damming of the stream. Judgment was therefore given for the defendants with costs.

Sale of Goods on Commission.

In *Halford* v. *Cocknell*, at Evesham County Court, the claim was for £71 6s. as the balance of an account for peas supplied. The plaintiff was a market gardener, and her case was that she had been in touch with the defendant, who was a fruiterer and greengrocer, at Coventry. She was then approached by a Mr. F. J. Stallard, who offered her 22s. per pot for the peas. This was to be the minimum price for the peas in an out-and-out sale. Nothing was mentioned about the peas being sold on commission. The plaintiff provided the pea pickers, and Mr. Stallard brought a man to supervise the weighing and despatch. He also paid the carriage on the goods to Coventry. The defendant's case was that there had been no out-and-out sale. After the plaintiff had first been approached on the subject, the defendant sent to Mr. Stallard a telegram stating . . . "accept peas on commission only." Moreover, a condition had been made that the defendant could have the peas provided he also purchased apples and pears. His Honour Judge Roope Reeve, K.C., held that the plaintiff had jumped to the conclusion that she had arranged to sell her peas outright at 22s. per pot. That was the result of a misunderstanding. Assuming, however, in the plaintiff's favour, that she had made such a bargain, the action must fail for the reason that the telegram instructing

Mr. Stallard to accept the peas, specified that the peas were to be accepted on commission only. It was, therefore, not within the scope of the agent's authority to conclude an out-and-out sale. Judgment was therefore given for the defendant with costs.

Validity of Probate.

In *Hall* v. *Hall*, at Hereford County Court, the claim was for possession of a house and garden at Little Dewchurch, with an adjoining piece of land known as Ashen Coppice. The plaintiff's case was that she was executrix of the will of her late mother, and the defendant was her brother. The plaintiff produced deeds showing that the property formerly belonged to her late father, and then became vested in her mother, who died in 1941. The defendant admitted that he had been in possession of the property for three years or more. He disputed the plaintiff's title, however, on the ground that he challenged the Royal Succession from the days of James Stuart. The result was that the Probate Act, 1857 (which had been signed by Queen Victoria) had not really received the Royal Assent. His Honour Judge Roope Reeve, K.C., held that he could not ignore a statute which had been acted upon for upwards of eighty years. If the statute was really invalid, as the defendant suggested, Parliament would pass an Indemnity Act to validate all the titles which depended upon probates granted under the Probate Act, 1857. An order was therefore made for possession in twenty-one days, with a stay of execution conditionally upon notice of appeal being delivered within fourteen days.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stampedaddressed envelope.

War Damage Contributions—Liability.

Q. Early in 1939 an estate owning company agreed to sell two building sites to a builder who, in accordance with the terms of the sale agreement, entered upon the sites and proceeded to erect two dwelling-houses thereon, obtaining from the vendor estate company advances as the work proceeded. These loans were secured by a memorandum of charge on the builder's said agreement. In 1941 one of the houses was completely finished, and as an early sale was then deemed unlikely the builder let the finished house on a yearly tenancy and collected the rent payable in respect thereof. Eventually, in 1944, the builder sold both the houses, and on the completion of the conveyances from the estate owner by the builder's direction to the purchasers the builder paid to the estate company the balance of the purchase money for the land with the interest thereon and also paid the principal and interest due on the loan charge. The builder, having paid the instalments of the war damage contribution in respect of such properties, now claims to be entitled to recover the whole of these from the estate company on the grounds that on the relevant date the estate company were owners of the fee simple. The estate company, on the other hand, contend that the builder, as the owner of the interest which carried the right to possession of the whole of the property, is the direct contributor and, therefore, liable for the instalments without any right of recoupment from the estate company, even as mortgagee. Please state :—

(1) Which of these contentions is correct ? and

(2) In any event, how the amount of each contribution is to be calculated in the case of these two properties when, in neither case, was the property either assessed for Sched. A or included in a valuation for rating purposes during the risk period from 3/9/39 to 31/8/41, although in respect of one property rent was actually accruing for part of such risk period ?

A. A curious position. On the facts stated the opinion is given :—

(1) The company was undoubtedly the direct contributor under the Act in respect of the instalment for any year in which on the 1st January the legal estate in fee simple was vested in it (see s. 105, War Damage Act, 1943). If the builder paid when he need not have done and without any suggestion from the vendor company, it seems that, having paid under a mistake of law, he would have no right to recover back from the company. Whether, assuming the company had paid, it would have any right of recoupment against the builder, seems to depend on the wording of the agreement, but on the bare facts stated it would seem that the company might claim that it was, from a certain date in respect of each house, in the position of a trustee, and as such would have the right of indemnity which any trustee has. On the other hand, if the builder's liability is established, he should have a right of contribution against the company as mortgagee, and it is recommended that a settlement be made on that basis.

(2) The contribution is on the net assessment for a full year for Sched. A on the first day of the " relevant risk period " on which the assessment was in force, the relevant risk period being the period from the 3rd September, 1939, to each 1st January following (ss. 38, 39 and 40). Presumably up to a certain date the liability was in respect of a much larger unit of bare land i.e., up to the date when the buildings became assessable, as to which, see s. 41.

Possessory Title.

Q. A owner of certain land died in 1909 leaving B his widow and several children. C, his eldest son and heir-at-law, died in 1932, never having taken possession or asserted any right whatever and leaving a son D. B, the widow, was entitled, in 1909, and subsequently, to one-third of the income for life and to dower, and she in fact remained in possession of the lands receiving the rents which practically only paid the interest on the mortgage and outgoings and left very little or no surplus. B always paid the interest on the mortgage regularly and all outgoings and was in possession without question. Has B acquired a possessory title and can her executor sell notwithstanding Limitation Act, 1939, on her decease, which has just occurred, as the heir-at-law's interest accrued in 1909 and as we contend become barred.

A. It is assumed that the deceased died intestate and that the widow did not take out letters of administration. C as heir-at-law is barred as, even if he were an infant, he would only have a further six years after he came of age, if the twelve years expired during his infancy. In the absence of concealed fraud, the widow can make a title under the Limitation Act, 1939, but a purchaser would be well advised to insist on the mortgagee joining in the conveyance and not merely giving a receipt on the mortgage—or the purchaser could take a transfer of the mortgage and keep it alive, which would probably be effective to prevent any adverse claim.

Notes of Cases.

CHANCERY DIVISION.

Brilliant *v.* **Michaels.**

Evershed, J. 27th October, 1944.

Landlord and tenant—Agreement for lease—Term to begin when tenant in possession leaves—Validity of agreement.

Witness action.

The plaintiff alleged that the defendant had by an oral agreement, dated 3rd April, 1943, as varied on 10th May, 1943, agreed to let to him flat No. 4 in the block of flats owned by her, at a monthly rent of £14 1s. 8d. This rent was in fact in excess of the standard rent. The flat was in the occupation of H as tenant. The plaintiff had seen H, who stated that he would be leaving the flat in June. The plaintiff alleged that it was a term of the agreement that possession was to be taken when the flat became vacant. The flat became vacant in June. The defendant then refused to grant a lease of the premises to the plaintiff. In this action he sought specific performance of the agreement. The defence to the action was, first, that no agreement had ever in fact been entered into between the parties; secondly, that, if there was any such agreement, it was not enforceable at law or in equity by reason of the absence of any date for the commencement of the term.

Evershed, J. (after having held that no binding agreement for letting the flat had ever been made), said that, as there had been considerable argument on the second point raised, it might be desirable for him to express his view upon it. The point was that it was essential for the enforceability of a contract relating to the letting of land that the date of the commencement of the term should be certain or, at any rate, certainly ascertainable, and should not be dependent upon the happening of some event which might be called a wholly casual event. In Fry, on " Specific Performance," 6th ed., para. 378, it was stated : " In a contract for the granting of a lease the date of the commencement of the lease is a material term, and if it does not appear in the contract, by expression or reference it is incomplete : nor can it be inferred to begin at the date borne by the memorandum of agreement, though it may, of course, be collected from the agreement read as a whole. Lush, L.J., in *Marshall* v. *Berridge*, 19 Ch. D. 233, said : " There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract for a lease must, in order to satisfy the Statute of Frauds, contain those elements." The reference to a certain beginning did not mean that there must be in the contract, either by express terms or necessary inference, a date then and there fixed. It was clear that valid contracts might be made which were enforceable, though at the time of their making they might be conditional (Fry on " Specific Performance," 6th ed., para. 982). The present case was novel and went a little further than any decided case, because the event here was one which might not occur for a very long time indeed—if ever in the lifetime of the plaintiff or the defendant. In some of the cases, it appeared that the condition was one which must happen, if at all, within some reasonably limited time. He had come to the conclusion that that was not essential to the validity of the contract. He could not see any principle which distinguished the case of a contingency which must happen, say, within ten or twenty years, from a contingency which might not happen for a very long time indeed, if at all. His opinion was that a contract for a lease was enforceable, notwithstanding that the commencement of the term might be expressed by reference to the happening of a contingency which was at the time uncertain, provided that at the time when the contract was sought to be enforced, the event had occurred and the contingency had happened. If the matter had rested upon that line of defence, he would have been prepared to find in favour of the plaintiff. The rent which was finally settled was substantially in excess of the standard rent. Had the plaintiff

succeeded, the question would have arisen whether the court would have made an order for specific performance of an agreement, a material term of which was not wholly enforceable at law. In the circumstances it was unnecessary for him to reach a final conclusion on this matter. He was not satisfied that the court ought to grant specific performance of an agreement one term of which, to the knowledge of the court, was unenforceable in whole or in part, particularly where, as in this case, the limitation of the amount of rent was a matter of public policy.

Action dismissed.

COUNSEL: *H. J. Astell-Burt; C. D. Myles.*

SOLICITORS: *Lucien Fior; W. B. Wattson.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

Town and Country Planning Bill [H.C.].
Read Second Time. [1st November.

HOUSE OF COMMONS.

Matrimonial Causes (War Marriages) Bill. [H.L.]
Read Third Time. [31st October.

Prolongation of Parliament Bill [H.C.].
Read Second Time. [31st October.

Ministry of Social Insurance Bill [H.C.]
To establish a Ministry of Social Insurance and for purposes connected therewith.
Read First Time. [3rd November.

QUESTIONS TO MINISTERS.

COMPASSIONATE LEAVE IN DIVORCE CASES.

Mr. LIPSON asked the Secretary of State for War if men serving with the M.E.F. are given equal facilities with men in the B.L.A. to come home and give evidence in divorce cases when this is necessary.

Sir JAMES GRIGG: The Commander-in-Chief in any theatre has complete discretion to grant compassionate leave. I am aware that in a few cases men in the British Liberation Army have been granted leave for a few days to appear in divorce cases in Scottish courts. I understand that this saves a lengthy alternative procedure which is peculiar to Scotland. The procedure for England and Wales is much simpler. Even in Scottish cases Commanders-in-Chief in more distant theatres generally do not consider that the advantages of personal appearance where there are no other special circumstances justify the long absence from duty involved in a journey from those theatres and this view seems to me a reasonable one. [31st October.

CONSOLIDATION AND CLARIFICATION OF STATUTE LAW.

Mr. KEELING asked the Attorney-General what steps are being taken to consolidate statute law and to clarify archaic and ambiguous statutes.

THE ATTORNEY-GENERAL: The Government realise the importance of consolidating statutes dealing with the same subject and of generally clarifying and overhauling the Statute Book. This task requires much more skill and experience than is commonly supposed. It should, the Government think, be undertaken systematically and with adequate provision for the specialised staff required. It will be a very long task. The war has, of course, increased the difficulties of the Parliamentary Counsels Office in recruiting and training draftsmen, and in view of this and of the heavy programme of legislation to be expected in the near future, some time must inevitably elapse before the necessary staff is available. At present one Parliamentary Counsel is giving part of his time to this work with a trained assistant who has no other duties. As soon as men can be trained it is intended that one Parliamentary Counsel should be set apart for this work alone and have two trained assistants. If further staff are proved to be necessary in the future they should, in the Government's opinion, be provided. My noble friend the Lord Chancellor is becoming the Chairman of the Statute Law Committee, who will exercise general supervision over the programme of consolidation work. When the machine is got into working order it is proposed to make an annual report to Parliament on the progress made. [1st November.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 1207. **Apparel and Textiles** (Headwear) Directions and Order. Oct. 27.

E.P. 1189. **Consumer Rationing,** General Licence, Oct. 23, under Consumer Rationing (Consolidation) Order, re Supply of certain Yarns.

E.P. 1199. **Food.** Feeding Stuffs (G.B.) Order, Oct. 21, amending the Feeding Stuffs (Regulation of Manufacture) Order, 1944.

E.P. 1210. Food (Milk) (E. & S.) Directions, Oct. 28. Supplementary to the Milk (Control of Supplies) Order, 1942, and the Milk (Control of Supplies) (Scotland) Order, 1942.

E.P. 1197. Food. Stock Turkeys (G.B.) (Control of Sales in November) Order, Oct. 21.

No. 1208/L. 44. **Liabilities** (War-time Adjustment) Rules. Oct. 26.

E.P. 1204. **Motor Fuel.** General Licence (Visits to Relatives of Forces) No. 1, Oct. 20.

E.P. 1223. **Navigation Order,** No. 20 (1942) (Revocation) Order. Oct. 27.

No. 1193. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 13) Order. Oct. 24.

No. 1225. **Unemployment Insurance** (Increase of Benefit) Act (Commencement) Order. Oct. 26.

E.P. 1224. **Wireless Receivers** (Ships) (1941) (Revocation) Order. Oct. 27.

PROVISIONAL RULES AND ORDERS, 1944.

Housing (Temporary Accommodation) Provisional Regulations. Oct. 16.

DRAFT STATUTORY RULES AND ORDERS, 1944.

Education, England and Wales. Draft, Oct. 24, of the School Attendance Order Regulations, 1944.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Notes and News.

Honours and Appointments.

It is announced by the Colonial Office that the King has approved the appointment of Mr. EDWARD ENOCH JENKINS (Attorney-General, Fiji) to be Chief Justice of Nyasaland, in succession to Sir Claud Seton, whose appointment to be Chief Justice, Fiji, was announced on 19th October. Mr. Jenkins was called by Gray's Inn in 1924.

The Lord Chancellor has appointed Mr. E. LOUIS JONES, Registrar of the Wrexham, Mold, Oswestry and Llanfyllin County Courts, and District Registrar in the District Registry of the High Court of Justice in Wrexham, to be in addition Registrar of the Rhyl, Holywell and Flint County Courts and District Registrar in the District Registry of the High Court of Justice in Rhyl; Mr. WILLIAM RICHARD HUGHES, Registrar of the Bangor, Caernarvon, Llangefni, Holyhead and Menai Bridge County Courts and District Registrar in the District Registries of the High Court of Justice in Bangor and Caernarvon to be, in addition, Registrar of the Conway, Llandudno and Colwyn Bay and Llanrwst County Courts; and Mr. REGINALD PENDRILL ST. JOHN CHARLES, Registrar of the Neath and Port Talbot County Court, to be, in addition, Registrar of the Bridgend County Court and District Registrar in the District Registry of the High Court of Justice in Bridgend. All appointments take effect from the 1st November, 1944.

Notes.

The directors of the Legal and General Assurance Society, Limited, have declared an interim dividend for the year 1944 at the same rate as for the previous year, namely, one shilling per share, less income tax, payable on the 1st January, 1945.

Messrs. Amery-Parkes & Co., solicitors, of Fanum House, New Coventry Street, London, W.1, have informed us of the death of their clerk, Mr. Frank Pepper, at the age of sixty-eight. They write as follows: "He came as junior clerk to Mr. Amery-Parkes when he was admitted in 1891. Subsequently he was transferred to the conveyancing department, and ultimately took control, and continued in that position until his death. He served Mr. Amery-Parkes and the firm for a period of fifty-three years, and during that time endeared himself to all who came in contact with him. He was indefatigable in all the business entrusted to him, he seldom took a holiday, in fact, his whole life was engrossed in his work and in the interests of the firm."

Wills and Bequests.

Mr. R. D. Maddock, solicitor, of Broadstone, left £24,390, with net personalty £19,592.

Mr. A. W. Oke, solicitor, of Hove, left £34,500, with net personalty £30,086.

Court Papers.

Supreme Court of Judicature.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Mon., Nov. 13	Mr. Hay	Mr. Jones	Mr. Reader
Tues., 14	Farr	Reader	Hay
Wed., 15	Blaker	Hay	Farr
Thurs., 16	Andrews	Farr	Blaker
Fri., 17	Jones	Blaker	Andrews
Sat., 18	Reader	Andrews	Jones

Date.	Group A. Mr. Justice Cohen. *Witness.*	Group A. Mr. Justice Vaisey *Non-Witness.*	Group B. Mr. Justice Uthwatt *Witness.*	Group B. Mr. Justice Evershed *Non-Witness.*
Mon., Nov. 13	Mr. Blaker	Mr. Andrews	Mr. Hay	Mr. Farr
Tues., 14	Andrews	Jones	Farr	Blaker
Wed., 15	Jones	Reader	Blaker	Andrews
Thurs., 16	Reader	Hay	Andrews	Jones
Fri., 17	Hay	Farr	Jones	Reader
Sat., 18	Farr	Blaker	Reader	Hay